

Summary of Proposed Local Rule 11.3.3.C

The proposed amendment to the court's local rule is summarized below. Immediately following the summary, you will find the full text of the proposed changes with deletions noted in ~~strike~~ and proposed additions noted in underline.

❑ RULE 11.3.3.C – Conduct of Mediation

- The proposed amendment complies with the requirements of California Rule of Court, Rule 5.210 which states in section (d)(1)(H) that each court must ensure that within one year of the adoption of this rule, the court adopts a local court rule regarding ex parte communication.

RULE 11.3 CHILD CUSTODY, VISITATION

All proceedings relating to the custody or visitation of children shall be governed by the following rules:

1. Parties shall make a good faith effort to arrive at an agreement regarding child custody or visitation before contacting the Families and Children's Bureau Alternative Dispute Resolution Services and before the court hearing.

2. **Mediation:** If there is disagreement over child custody or visitation in the matter before the Court, this issue must be submitted to mediation before the court hearing.

A. Upon the filing or service of the Order to Show Cause or Notice of Motion, an appointment for mediation with a custody mediator shall be arranged.

B. If the parties have already reached an agreement regarding custody or visitation, they need not contact the Families and Children's Bureau Alternative Dispute Resolution Services.

3. **Conduct of Mediation:**

A. In any mediation pursuant to Family Code Sections 3160-3165, (General Provisions), 3170-3173 Availability of Mediation) and 3175-3188 (Mediation Proceedings) the mediator may make an oral or written recommendation as requested by the Court, and, at the request of a party or attorney upon reasonable notice, the mediator shall be subject to cross-examination. Reasonable notice shall be given in writing and shall be given as soon as either party has knowledge that testimony will be required.

B. All mediation proceedings shall be held in private, and all communications from the parties to the mediator shall be deemed official information within the meaning of Evidence Code Section 1040. The mediator may exclude attorneys from the mediation proceeding in the sole discretion of the mediator. In the absence of an agreement between the parties, the mediator may make a recommendation to the Court as to the custody or visitation issue including, if appropriate, a recommendation for an evaluation pursuant to Family Code Section 3110-3118.

C. Absent a written stipulation of the parties and/or their respective attorneys, there will be no ex parte communication between the mediator and any party, or attorney for any party involved in the case, except in cases involving sworn allegations of domestic violence or a history of domestic violence; or for the purposes of

scheduling appointments, coordinating collateral contacts or services; or as otherwise permitted or required by law.

4. Mediation Complaint Process: The procedure for processing a complaint concerning a Family Court Services counselor shall be as follows:

A. A person having a complaint regarding the professional conduct of a mediator may discuss the matter with the mediator before pursuing it as provided further in this rule.

B. If the matter is not resolved with the mediator, the complainant may register the complaint verbally or in writing with the Supervising Counselor. The Supervising Counselor will make a record of the complaint and will respond to the complainant within three business days by telephone, if possible, or letter acknowledging receipt of the complaint.

C. Within ten business days of receipt of the complaint, the Supervising Counselor will review the matter, confer with the mediator, and as appropriate, resolve the matter directly with the complainant. The Supervising Counselor will confirm the resolution of the matter with the complainant by calling or writing to the complainant with the results of his/her review and determination.

D. Complainant may appeal the Supervising Counselor's action in writing to the Chief of the Families & Children's Services Bureau, who will, as appropriate, refer the complaint to the Bureau's Policy and Procedure Review Committee for review and recommended action. The Bureau Chief will acknowledge, in writing, receipt of the complaint within five business days of receipt.

E. The Policies and Procedural Review Committee will review the complaint within the next 10 business days and make a recommendation for action to the Bureau Chief. The Bureau Chief will respond in writing to the complaint within the next 10 business days. The complainant may appeal the action of the Bureau Chief in writing, to the Court's Executive Officer who will rule in writing on the complaint within 15 business days.

(Effective 5/19/98; Amended 1/1/04 and 7/1/06)